Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996	)	
	)	CC Docket No. 96-238
Amendment of Rules Governing	)	
Procedures to Be Followed When	)	
Formal Complaints Are Filed Against	)	
Common Carriers	)	

REPLY COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

Introduction

The United States Telephone Association (USTA) respectfully submits these reply comments in response to the Notice of Proposed Rulemaking released by the FCC on November 27, 1996. As the principal trade association of the local exchange carrier industry, USTA has a significant interest in the rules of practice and procedure governing complaints against common carriers.

The Federal Communications Commission (Commission) has been given increased responsibilities to resolve complaints within shortened timeframes as mandated by the Telecommunications Act of 1996 (Act). Confronted with the difficult objective of expediting this process while compiling a complete record upon which fair decisions may be made, commenting parties have almost unanimously applauded the Commission's

efforts to achieve balance. There were also several issues on which there was substantial agreement among commentors.

I. Rules Must Protect Fair Resolutions, Be Better Balanced

Virtually all the commenting parties from a wide segment of the telecommunications market have expressed the view that prompt settlement of disputes is highly desirable. Some commentors did express fear that pre-complaint procedures designed to encourage settlement might unreasonably delay or foreclose complainants. The Commission must ensure that this does not happen. At the same time, the certification of settlement must have substance, and this part of the process must be meaningful. USTA is confident that it is possible to require both parties to take reasonable steps to explore the possibility of settlement, and to fashion the requirements so that neither party can unilaterally delay the complaint process. The time and effort the FCC staff and commentors spend on designing such a process is well worth it. Each time that a complaint can be settled before the formal process starts, there is a substantial saving of the resources of the parties and the FCC. For small companies or consumers involved, early resolution would be particularly appreciated.

A large number of commentors expressed reservations about eliminating discovery. Almost every one of these commentors recognized the potential for abuse in the discovery process yet, on balance, believe that some means of obtaining relevant factual information must be available. If it is practical, it seems that most commentors would support early and intensive FCC staff involvement in the process, including the

discovery portion. Staff can ensure that relevant information is exchanged, but that "fishing expeditions" are discouraged.

An additional area where Commission involvement would seem to be universally welcomed is in the use of Administrative Law Judges to resolve disputed matters of fact. It is also well worth repeating a general point made by many commentors: there is no substitute for "hands on" involvement by FCC staff throughout the process in order to weed out jurisdictional flaws, unmeritorious complaints, resolve interim disputes, and otherwise generally keep the process moving. Without that involvement, it will probably not be possible for the FCC to meet the extremely aggressive deadlines of the 1996 Act in a way that results in just outcomes for the parties.

II. Rules Must Take into Account the Different Situations of Complainants and Defendants

One of the more contentious Commission proposals is its call for the reduction of time in which to submit answers, along with the proposal to prohibit both general denials and assertions on information and belief.

As one party states:

> "[T]he practicalities give enormous advantage to complainants. Complainants have months or even years to prepare their initial pleading. Complainants can also choose the appropriate time to file their complaints. Defendants, on the other hand, in many cases do not even know that a complaint is going to be filed."[1]

[1] Comments of Southwestern Bell at pp. 4-5.

With the LEC industry being on the receiving end of most of these complaints, USTA strongly believes that if the ability to file answers is impaired, such a rule will most assuredly result in resolutions lacking constitutional requisites of fairness. The Commission must be mindful of the fact that complainants have a great deal more control over timing because they can choose when to file the complaint. Defendants then have a very abbreviated period to put together the information needed for the answer. A small carrier unfamiliar with the complaint process (and with limited resources) has a particularly heavy burden in this regard.

Conclusion

USTA commends the Commission on proposing rules that streamline the complaint process while dealing with the accelerated timetables established in the Act. Mindful of this tension between fair dispute resolution and administrative economy, USTA urges the Commission to "err" on the side of fairness, and asks the Commission to modify its proposals as suggested in our replies and initial comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, DonnaMarie Young, do certify that on January 31, 1997, reply comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

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